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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1937

No. 387

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

BANKLINE OIL COMPANY (a corporation),
Respondent.

RESPONDENT'S REPLY TO PETITIONER'S PETITION FOR CERTIORARI.

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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

In view of the fact that petitioner did not file a brief on the merits in support of its petition for certiorari, we shall limit ourselves in this reply to one or two comments about the salient features of the

problem. Before proceeding, however, we desire to point out that the decision of the Circuit Court of Appeals, which had not been reported at the time of the filing of the two petitions for certiorari in this action, has since been published in 90 Fed. (2d) 899.

I. THE ALLOWANCE OF DEPLETION FOLLOWS NECESSARILY FROM THIS COURT'S DECISION IN PALMER v. BENDER.

The decision of the Court in the instant case follows the decision of the same Court in

Signal Oil & Gas Co. v. Commissioner, 66 Fed. (2d) 886,

a case virtually identical with the instant case. From that decision no petition for certiorari was filed. No other Circuit Court of Appeals has ever rendered a decision to the contrary.

The principle upon which persons in the position of Bankline Oil Company are entitled to an allowance for depletion was established by this Court in its decision in

Palmer v. Bender, 287 U. S. 551.

This Court said, in granting an allowance for depletion to the taxpayer in that case, that any person who has an *economic* interest in the production of oil or gas wells is entitled to an allowance for depletion against that income. The same principle was reaffirmed in

Helvering v. Twin Bell Oil Syndicate, 293 U. S. 312,

and in

Thomas v. Perkins, No. 824, October Term, 1936, decided June 1, 1937, and found in 81 L. Ed., Adv. Op. 870.

The two cases last referred to involve the reverse of the *Palmer v. Bender* situation, and the decisions in all three are entirely consistent.

The decisions of the Ninth Circuit do not in any way extend the principles there established. In none of the cases cited was the taxpayer the operator of the well. However, this Court held that if the taxpayer retained a right to share in the production he retained "an economic interest in the oil in place which is depleted by production".

Palmer v. Bender, 287 U. S. at 557.

An affirmance of this judgment will not, contrary to the contention of the Commissioner, have any effect on the depletion allowances to operators of the wells who furnish natural gas to the Bankline Oil Company. They do not receive the full value of the gas produced and they are entitled to depletion only upon what they receive for their gas. Bankline is endeavoring to obtain depletion upon the difference between the full value of the gas and the amount allowed to the well operators.

II. THE CROSS PETITION FILED BY BANKLINE OIL COMPANY.

As we pointed out in the petition for certiorari filed on behalf of Bankline Oil Company, this case involves two questions of law. Besides the depletion question,

above referred to, Bankline Oil Company claims that the income which it derived from tidelands leased to it on a royalty basis from the State of California is exempt from Federal income taxes. Such an exemption was recognized by this Court in

Burnet v. Coronado Oil & Gas Co., 285 U. S. 393.

Some limitation was placed upon that exemption by the decision in

Burnet v. Jergins Trust, 288 U. S. 508.

However, we submit that it is quite apparent from that opinion that this Court did not intend to overrule its former decision. Inasmuch as the facts in the instant case are so nearly identical with those present in the *Coronado Oil & Gas* case, we respectfully submit that the Circuit Court erred in denying Bankline's claim and in refusing to follow the principles which this Court had established.

In conclusion, we submit that if this Court should determine to review any portion of the decision of the Circuit Court of Appeals, it should review that portion denying to Bankline Oil Company exemption from Federal taxation of income received from a state tideland lease.

Dated, Los Angeles, California,
October 4, 1937.

Respectfully submitted,

A. L. WEIL,
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MARTIN J. WEIL,
Of Counsel.